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NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION ONE

SETH LANDAU, Plaintiff and Appellant, v. GIPSON HOFFMAN & PANCIONE et al., Defendants and Respondents.	B211392 (Los Angeles County Super. Ct. No. BC389879)

APPEAL from orders of the Superior Court of Los Angeles County, Malcolm H. Mackey, Judge. Affirmed.

Sauer & Wagner, Gerald L. Sauer and Vina Chin for Plaintiff and Appellant.

Berger Kahn; Gladstone Michel Weisberg Willner & Sloane and Allen L. Michel for Defendants and Respondents Gibson Hoffman & Panicione and Kenneth I. Sidle.

Parker Mills, David B. Parker and Theodore W. Frank for Defendant and Respondent Nicholas Rockefeller.

In 2002, a Washington corporation sued the law firm Perkins Coie and partner Nicholas Rockefeller in California for malpractice, after the dismissal of a lawsuit in which Perkins Coie and Rockefeller represented the corporation. In 2003, Rockefeller sued the president of the corporation, Seth Landau, in Washington, alleging intentional misrepresentation, invasion of privacy, and unfair business practices. In 2007, Rockefeller sued Perkins Coie in California for breach of contract and indemnity, in connection with Rockefeller's defense of the malpractice action and his tort suit against Landau. Finally, in 2008, Landau filed a malicious prosecution action in California against Rockefeller and Rockefeller's California lawyers in the Washington tort action, Gipson Hoffman & Pancione (GHP) and Kenneth I. Sidle. GHP and Sidle filed a motion to strike under Code of Civil Procedure section 425.16 (the anti-SLAPP statute), and the trial court granted the motion and dismissed them from the action.[1] Rockefeller filed a motion to quash, which the trial court granted on the ground that it did not have personal jurisdiction over Rockefeller. Landau appeals from the orders of the trial court.

BACKGROUND

I. Earlier Lawsuits

A. The In4 California Lawsuit Against USC and the 2002 California Malpractice Lawsuit

In 1999, In4Network, Inc. (In4), a Washington corporation, entered into an agreement with the University of Southern California (USC), purchasing a license to manufacture and market products using a prototype software which purported to immerse a desktop computer user in virtual sound. When In4 became dissatisfied with the technology provided by USC, the company sued USC in Los Angeles Superior Court. The Los Angeles office of the law firm Perkins Coie represented In4. In August 2002, In4 filed a legal malpractice action against Perkins Coie in Los Angeles Superior Court, also naming (among others) partner Nicholas Rockefeller.

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[1] All further statutory references are to the Code of Civil Procedure unless otherwise indicated.

B. The 2003 Washington Action

Rockefeller sued Seth Landau, In4's president and a resident of Washington, in Washington state court in February 2003 (the Washington action). The complaint alleged that Landau had committed intentional misrepresentation and unfair business practices in his efforts to persuade Rockefeller and Perkins Coie to represent In4 in its lawsuit against USC. The complaint also alleged that Landau invaded Rockefeller's privacy when he recorded confidential communications with Rockefeller without his consent. Rockefeller was represented by a Washington law firm and by GHP, a California law firm, and GHP partner Kenneth I. Sidle. The Washington court granted Landau's motion for summary judgment on Rockefeller's claims for intentional misrepresentation and unfair business practices. After Landau unsuccessfully moved for a nonsuit or directed verdict on Rockefeller's claim for invasion of privacy, the invasion of privacy claim went to a jury, which found in favor of Landau. The court awarded Landau $225,000 in attorney fees and costs against Rockefeller in an order dated October 20, 2005.

C. Rockefeller's 2007 Lawsuit against Perkins Coie

Rockefeller subsequently sued Perkins Coie in Los Angeles Superior Court in late December 2007 for breach of contract and indemnity related to his expenses in the Washington action. On a motion by Perkins Coie, on April 16, 2008 the court stayed the action and compelled the parties to arbitration in Washington under Rockefeller's partnership agreement.

II. The 2008 Action for Malicious Prosecution

On April 29, 2008, Landau filed a complaint in Los Angeles Superior Court, naming GHP, Sidle, and Rockefeller as defendants, and alleging that Rockefeller's Washington action constituted malicious prosecution. Landau alleged that Rockefeller filed the 2003 Washington action against him in retaliation for In4's 2002 California malpractice action against Perkins Coie.

Landau was unable to serve Rockefeller personally or by mail, and sought and obtained an order to serve Rockefeller by publication. Service by publication was complete on July 28, 2008.

A. The Anti-SLAPP motion

On July 1, 2008, GHP and Sidle filed an anti-SLAPP (strategic lawsuit against public participation) motion to strike Landau's malicious prosecution action under section 425.16. The motion contended that the claim of malicious prosecution arose out of protected activity (GHP's and Sidle's statements in a judicial proceeding, the Washington action) and that Landau could not establish that he had a prima facie case against GHP and Sidle. GHP and Sidle argued that the court should apply Washington's malicious prosecution law.

The trial court heard the motion to strike on September 23, 2008, and issued a minute order granting the motion. The court concluded that the complaint fell within section 425.16; the Washington law of malicious prosecution applied; under Washington law Landau had not established a prima facie case; and even under California law, Landau had not established that GHP and Sidle lacked probable cause to file the Washington action. The court issued a final order striking the complaint on October 10, 2008. After awarding GHP and Sidle attorney fees and costs, the court dismissed them from the action in an order filed December 4, 2008. Landau filed a timely appeal.

B. The Motion to Quash

On August 28, 2008, Rockefeller filed a motion to quash service of process. Rockefeller argued that the California court did not have personal jurisdiction over him because he did not have "minimum contacts" with California, and that at any rate the court should stay or dismiss the action on the ground of inconvenient forum. In response, Landau argued that the motion to quash was untimely, and that Rockefeller had consented to the court's jurisdiction by defending himself in the 2002 malpractice Lawsuit and by suing Perkins Coie in California in 2007. Landau also argued that Rockefeller had minimum contacts with California, and that California was not a "seriously inconvenient" forum.

The court granted Rockefeller's motion to quash in a minute order after a hearing on September 26, 2008, concluding that it lacked specific jurisdiction over Rockefeller because Landau had not carried his burden to show that Rockefeller had established

minimum contacts with California. After a notice of ruling on October 2, 2008, Landau filed a timely appeal.

By order of this court, Landau filed a single opening brief on appeal to address the trial court's granting of the SLAPP motion and the motion to quash. Both orders are appealable. (§§ 425.16, subd. (i), 904.1, subd. (a)(3).)

DISCUSSION

Landau argues that the trial court should have applied California instead of Washington law in deciding the SLAPP motion, and that under California law he had established a prima facie case of malicious prosecution against GHP and Sidle. Landau also argues that the trial court erred in granting Rockefeller's motion to quash because it was untimely, because Rockefeller had consented to California's jurisdiction, and because Rockefeller had minimum contacts with California.

I. The Anti-SLAPP motion

Section 425.16, which is known as the anti-SLAPP statute, authorizes the early dismissal of SLAPP actions; SLAPP is an acronym for "strategic lawsuit against public participation." **(***Maughan v. Google Technology, Inc.* (2006) 143 Cal.App.4th 1242, 1244 fn. 1.) Section 425.16, subdivision (b)(1) provides: "A cause of action against a person arising from any act of that person in furtherance of the person's right of petition or free speech under the United States or California Constitution in connection with a public issue shall be subject to a special motion to strike, unless the court determines that the plaintiff has established that there is a probability that the plaintiff will prevail on the claim." The statute provides a method for summary disposal of meritless lawsuits intended "'to chill or punish a party's exercise of constitutional rights to free speech and to petition the government for redress of grievances. [Citation.].'" (*Paiva v. Nichols* (2008) 168 Cal.App.4th 1007, 1015.)

On appeal, we review de novo the trial court's grant of an anti-SLAPP motion to strike, independently reviewing the entire record to determine whether (1) the defendant has met its burden to establish that its action arises from protected activity, and (2)

whether the plaintiff has shown a probability of prevailing on the merits. (*Paiva v. Nichols, supra,* 168 Cal.App.4th at pp. 1016–1017.)

A. Protected activity

Landau does not dispute that Rockefeller's 2003 Washington action constitutes protected activity. In Landau's malicious prosecution action, "[t]he gist of plaintiff ['s] claims is that [GHP and Sidle] wrongfully pursued litigation. Litigation is activity protected by the speech and petition clauses. (See *Jarrow Formulas, Inc. v. LaMarche* (2003) 31 Cal.4th 728, 734–735, and cases therein cited . . . .) The claims therefore fall squarely within the reach of section 425.16. Plaintiff[] do[es] not appear to contend otherwise. [He] therefore necessarily predicate[s his] claim of error on the premise that, contrary to the trial court's view, [he] [has] demonstrated a probability that [he] would prevail on [his] claims." (*Drummond v.Desmarais* (2009) 176 Cal.App.4th 439, 449.)

B. Probability of success on the merits

To establish that his malicious prosecution lawsuit had a probability of success on the merits, Landau was required to show that he "'state[d] and substantiate[d] a legally sufficient claim.' [Citation.] 'Put another way, the plaintiff "must demonstrate that the complaint is both legally sufficient and supported by a sufficient prima facie showing of facts to sustain a favorable judgment if the evidence submitted by the plaintiff is credited."' [Citation.]" (*Jarrow Formulas, Inc. v. La Marche, supra,* 31 Cal.4th at p. 741.) We consider the pleadings and the evidentiary submissions of both parties and, without weighing the credibility or comparative strength of the evidence, we will affirm the trial court if, as a matter of law, GPH and Sidle's evidence supporting the anti-SLAPP motion defeats Landau's attempt to establish evidentiary support for his malicious prosecution claim. (*Id.* at p. 741 fn. 10; *Drummond v. Desmarais, supra,* 176 Cal.App.4th at p. 449.)

1. Choice of law

To decide whether Landau stated and substantiated his claim of malicious prosecution, we must first determine under which law—Washington or California—we judge whether his claim was legally sufficient. The trial court applied Washington law,

which, unlike California law, requires the malicious prosecution plaintiff to allege and prove "arrest or seizure of property and . . . special injury (meaning injury which would not necessarily result from similar causes of action)." (*Clark v. Baines* (2004) 150 Wash.2d 905, 912 [84 P.3d 245] [plaintiff must also prove that defendant instituted prosecution claimed to have been malicious, that the prior prosecution was without probable cause, that the proceedings were instituted or continued through malice, that the proceedings terminated on the merits in plaintiff's favor, and that plaintiff suffered injury or damage as a result].) Landau concedes that he did not allege that the 2003 Washington action resulted in any interference with his person or property; if Washington law applies, his malicious prosecution complaint is not legally sufficient, he cannot establish any probability of success on the merits, and the anti-SLAPP motion to strike would thus have been properly granted.

Landau therefore argues strenuously for the application of California law, under which "a plaintiff must demonstrate 'that the prior action (1) was commenced by or at the direction of the defendant and was pursued to a legal termination in his, plaintiff's, favor [citations]; (2) was brought without probable cause [citations]; and (3) was initiated with malice [citations].'" (*Sheldon Appel Co. v. Albert & Oliker* (1989) 47 Cal.3d 863, 871.)

As we decide this legal issue based on undisputed facts, we review de novo the trial court's choice of Washington law. (See *Tucci v. Club Mediterranee* (2001) 89 Cal.App.4th 180, 189–194.)

The parties agree that in a malicious prosecution action, "[t]he governing law is that of the state where *the proceeding complained of occurred*, with the usual qualification for a state of more significant relationship (which is rare)." (5 Witkin, Summary of Cal. Law (10th ed. 2005) Torts, § 197, p. 335 (emphasis in original); see Rest.2d Conf. of Laws, § 155, com. b, p. 475–476 ["The state where the proceeding complained of occurred has a natural interest in determining the extent to which resort to its legal processes is to be inhibited by the possibility that a person making use of these

processes will be held liable for malicious prosecution or abuse of process."].)[2] The parties also agree that they have been unable to locate any case in which a California court chose to apply California law in a malicious prosecution action based on underlying litigation occurring in another state. We also have not located such a case.

Nevertheless, Landau argues that we should apply California law because this is the rare case in which California has a more significant relationship with the litigation than does Washington, where Rockefeller sued Landau in the 2003 lawsuit that Landau claims was malicious prosecution. Landau urges us to conclude that the relevant original dispute between the parties is not the 2003 Washington action filed by Rockefeller, but In4's 2002 California malpractice lawsuit against Perkins Coie and Rockefeller.[3] In other words, Landau argues that the facts are exceptional and justify making an exception from the general rule which would apply Washington law, because the bad blood between the parties goes back to the California malpractice litigation initiated by In4.

In California, general choice of law questions are determined under the "governmental interest analysis," which provides the court "'must search to find the proper law to apply based upon the interests of the litigants and the involved states.'" (*Offshore Rental Co. v. Continental Oil Co.* (1978) 22 Cal.3d 157, 161.) First, we

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[2] The trial court's final order stated only "The Court further determines that Washington law applies . . . ." The minute order stated "the laws of Washington apply" and quoted this section of Witkin. The court's tentative ruling also quoted Witkin and then engaged in an analysis of governmental interest. While the judgment governs and the tentative decision is not binding, the court's comments are useful in understanding its reasoning. (*In re Marriage of Ditto* (1988) 206 Cal.App.3d 643, 646 (while a trial judge's comments may be valuable to illustrate the court's theory, they may never be used to impeach the judgment or order appealed from).)

[3] Although Landau refers to the case as "Appellant's Malpractice Action" and repeatedly states that he filed the malpractice action, he also acknowledges, as he must, that he did not maintain the malpractice lawsuit in his individual capacity. While undoubtedly the malicious prosecution litigation that is the subject of this appeal is between Landau and Rockefeller in their personal capacities, the 2002 California malpractice lawsuit was filed by In4, not by Landau.

determine whether the applicable rules of law are materially different. If the rules differ materially, we examine the interests of each state in having its law applied. "If each jurisdiction has an interest in applying its own law to the issue, there is a 'true conflict' and the court must proceed to the third step. In the third step, known as the comparative impairment analysis, the court determines which jurisdiction has a greater interest in the application of its own law to the issue or, conversely, which jurisdiction's interest would be more significantly impaired if its law were not applied. The court must apply the law of the jurisdiction whose interest would be more significantly impaired if its law were not applied." (*Frontier Oil Corp. v. RLI Ins. Co.* (2007) 153 Cal.App.4th 1436, 1454–1455 [citing *Kearney v. Salomon Smith Barney, Inc.* (2006) 39 Cal.4th 95, 107–108].)

The parties concede that the general choice of law in malicious prosecution actions is the law of the state where the prosecution alleged to be malicious occurred. This is entirely consistent with the application of California's general choice of law rule, because it stands to reason under a governmental interest analysis that the state in which the underlying lawsuit was filed "has a greater interest in the application of its own [malicious prosecution] law to the issue." (*Frontier Oil Corp. v. RLI Ins. Co.*, *supra*, 153 Cal.App.4th at 1439.) We are thus not faced so much with a choice of law issue as we are with Landau's assertion that this is an exceptional case requiring us to disregard the usual choice of law protocol, which would lead us to apply (as the trial court did) the law of Washington.

In support of his assertion that this is that rare case, Landau argues "all roads lead to California," because the contacts with California outnumber the contacts with Washington: In4 filed its action against USC in California, the legal work was performed by Perkins Coie's Los Angeles office, lead counsel GHP is a California law firm, and Sidle is a California resident. The parties' contacts with the state are relevant in the sense that the more there are, the greater the state's interest in having its rule govern. (See *Dixon Mobile Homes, Inc. v. Walters* (1975) 48 Cal.App.3d 964, 972, disapproved on another ground in *Bullis v. Security Pac. Nat. Bank* (1978) 21 Cal.3d 801, 815, fn. 18.) In this case, however, the contacts with Washington are also strong: Landau is a

Washington resident, and Washington counsel also represented Rockefeller in the 2003 Washington action. Landau does not assert that Washington was an improper venue. Most importantly, the lawsuit alleged to be malicious was filed, litigated, and determined in the Washington courts. The existence of some connections with California does not demonstrate that this is an exceptional case justifying application of California law.

Landau uses his list of California contacts to argue that Rockefeller filed the 2003 Washington action in retaliation for the 2002 malpractice action that In4 filed against Perkins Coie. To the extent that Landau accuses Rockefeller of an improper motive for filing the Washington action, Rockefeller's motives for filing the Washington action are not relevant to our choice of law. Nor, we note, is motive alone determinative of a malicious prosecution inquiry, which under both Washington and California law hinges on whether there was probable cause to file the lawsuit. (*Brin v. Stutzman* (1998) 89 Wash.App. 809, 819 [951 P.2d 291] ["proof of probable cause is an absolute defense to a malicious prosecution claim"]; *Sheldon Appel Co. v. Albert & Oliker*, *supra*, 47 Cal.3d at 875 ["If the court determines that there was probable cause to institute the prior action, the malicious prosecution action fails, whether or not there is evidence that the prior suit was maliciously motivated."].)

Landau also argues that Rockefeller filed the Washington action in 2003 against Landau to gain a tactical and strategic advantage over In4 in the California malpractice action. He cites to portions of the record which are documents filed in other court actions, and which were the subject of requests for judicial notice in the trial court. As we explain *infra*, we do not take judicial notice of the truth of those documents.

Landau further argues that GHP and Sidle filed the lawsuit in Washington *to avoid a future lawsuit for malicious prosecution,* because they knew that Washington law required a malicious prosecution plaintiff to show interference with his person or property, a showing that Landau could not make. Again, the parties' motives, without more, are not determinative of our choice of law. We note that Landau's filing of his malicious prosecution lawsuit in California could be considered similarly strategic: He chose to file in California, a state with a more lenient rule for recovery for malicious

prosecution, rather than in Washington, the state where the underlying litigation occurred, and where he acknowledges he could not meet the requirements for recovery.

The sad facts and extended multi-state rancor in this malicious prosecution case do not make it exceptional for the purposes of our choice of law. The lawsuit that is the basis of Landau's malicious prosecution action was filed and decided in the state of Washington, and we agree with the trial court that Washington law applies. Because Landau did not allege interference with his person or property, he did not state a legally sufficient claim under Washington law and he did not demonstrate a probability of prevailing on the merits. The trial court did not err in granting GHP's and Sidle's anti-SLAPP motion to strike under section 425.16.

II. The Motion to Quash

"On a motion to quash service of summons, the plaintiff bears the burden of proving by a preponderance of the evidence that all jurisdictional criteria are met. [Citations.] The burden must be met by competent evidence in affidavits and authenticated documents; an unverified complaint may not be considered as supplying the necessary facts. [Citation.] Where there is no conflict in the evidence, the question of personal jurisdiction is one of law. [Citation.]." (*Nobel Farms, Inc. v. Pasero* (2003) 106 Cal.App.4th 654, 657–658.)

A. Timeliness

Landau argues that Rockefeller's motion to quash was untimely under section 418.10, subdivision (a)(1), which provides that a defendant may serve and file a motion to quash service on the ground of lack of jurisdiction "on or before the last day of his or her time to plead or within any further time that the court may for good cause allow." Landau points out that service by publication on Rockefeller was commenced on June 30, 2008 and was completed on the last day of publication ordered by the trial court, July 28, 2008, leaving Rockefeller 30 days to file the motion. Rockefeller did not file the motion until August 28, 2008, 31 days later.

The motion to quash "clearly constitutes a 'pleading' which, if timely filed, would have precluded the clerk from thereafter entering defendants' default." (*Goddard v.*

Pollock (1974) 37 Cal.App.3d 137, 141.) The motion to quash was one day outside the 30-day period for Rockefeller to answer the complaint. "However, it is now well established by the case law that where a pleading is belatedly filed, but at a time when a default has not yet been taken, the plaintiff has, in effect, granted the defendant additional time within which to plead and he is not strictly in default. [Citations.] . . . The proper procedure is for the plaintiff to move to strike the defendant's untimely pleading and, if the court grants such relief, thereafter proceed to obtain the entry of the defendant's default. [Citation.]" (*Ibid.*)

Landau argues that Rockefeller waived the issue of jurisdiction, quoting section 481.10 subdivision (e)(3): "Failure to make a motion under this section at the time of filing a demurrer or motion to strike constitutes a waiver of the issues of lack of personal jurisdiction . . . ." Rockefeller, however, did not take the affirmative action of filing a demurrer or motion to strike, and so did not waive his jurisdictional objections. Although Landau raised the timeliness issue in his opposition to the motion to quash, the court did not address the timing of the motion and instead addressed the merits of Rockefeller's motion. (See *City of King City v. Community Bank of Central California* (2005) 131 Cal.App.4th 913, 923 fn. 4 [where court elected in its discretion to entertain merits of demurrer in the face of objections that it was untimely, issue of untimeliness was moot on appeal].)

B. Consent

Landau argues that Rockefeller consented to California's jurisdiction when Rockefeller filed his 2007 action against Perkins Coie in Los Angeles Superior Court, because Landau's malicious prosecution action was related to Rockefeller's 2007 action. At the hearing on the motion to quash and in its tentative ruling, the court stated: "the instant matter is not related to the lawsuit that Nicholas Rockefeller filed against Perkins Coie."[4]

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[4] Landau also argued that Rockefeller submitted to California jurisdiction by defending himself in the 2002 In4 malpractice action against Perkins Coie and Rockefeller, although he does not repeat this contention on appeal. The trial court noted

A party's consent to a court's jurisdiction "may . . . be implied by conduct." (*Nobel Farms, Inc. v. Pasero, supra*, 106 Cal.App.4th at p. 658.) "[W]hen a nonresident plaintiff commences an action, he submits to the court's personal jurisdiction on any cross-complaint filed against him by the defendant. [Citation.] By choosing a particular forum, plaintiff is considered to have voluntarily submitted to the court's jurisdiction 'for all purposes for which justice to the defendant requires his presence.' [Citations.]" (*Ibid.*) California therefore would have had personal jurisdiction over Rockefeller on any cross-complaint by defendant Perkins Coie in his 2007 action, but no such cross-complaint is at issue here.

Similarly, "a nonresident plaintiff who has filed suit in California against particular parties has consented to jurisdiction in California when these same parties later sue him in a related action." (*Nobel Farms, Inc. v. Pasero, supra*, 106 Cal.App.4th at p. 659.) In *Nobel Farms*, Pasero, a Mexican attorney, sued Nobel Farms in California for attorney fees, and Nobel Farms later sued Pasero for malpractice related to the same representation for which Pasero sought fees. The court held that Pasero had consented to the jurisdiction of the California court over the later suit, limiting its holding claims by Nobel Farms "arising from the same general transaction as [Pasero's] earlier attorney fee action." (*Id.* at p. 660.)

Landau argues that his 2008 malicious prosecution action is a related action to Rockefeller's 2007 lawsuit, and that Rockefeller submitted himself to California's jurisdiction by filing the previous lawsuit. This contention ignores, however, that the defendant in the 2007 lawsuit was Perkins Coie, not Landau, and that Rockefeller never instituted any judicial proceedings against Landau in California. Landau is not the same

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that Landau was not a party to the malpractice action and found that the case was not related for jurisdictional purposes. The court did not explicitly adopt its tentative ruling or specifically rule on the consent issue in the minute order granting the motion to quash, but its statements at the hearing and in the tentative ruling are consistent with its finding that no personal jurisdiction existed over Rockefeller. (See *In re Marriage of Ditto, supra*, 206 Cal.App.3d at p. 646 ["a court's comments may be 'valuable in illustrating the trial judge's theory.'"].)

part[y] against whom Rockefeller filed the 2007 lawsuit, and therefore Rockefeller did not consent to jurisdiction as to a suit filed by Landau, who was not involved in the 2007 litigation.

Landau cites *Sea Foods Co., Ltd. v. O.M. Foods Co., Ltd.* (2007) 150 Cal.App.4th 769, as support for his argument that the close causal connections between Rockefeller's 2007 lawsuit against Perkins Coie and Landau's malicious prosecution lawsuit against Rockefeller justify the conclusion that Rockefeller consented to jurisdiction. Yet in *Sea Foods*, as in *Nobel Farms*, the lawsuits in which the defendants were found to have consented to California jurisdiction were brought by parties that the defendants had sued in earlier proceedings instituted in California. In *Sea Foods,* Sea Foods brought suit against O.M. Foods and served a writ of attachment on Red Chamber. After obtaining a default against O.M. Foods, Sea Foods then attempted to collect $3.6 million from Red Chamber, who asserted as a defense a fraudulent scheme by Sea Foods. The court held that Sea Foods had voluntarily consented to jurisdiction in a subsequent suit against it by Red Chamber,[5] alleging the same fraudulent scheme: "As the two cases are clearly related, Sea Foods's act of bringing the first action acts as a consent to the jurisdiction of California courts over the second." (*Id.* at p. 787.)[6]

Rockefeller did not consent to jurisdiction in Landau's malicious prosecution action. We also note that Rockefeller's 2007 action for breach of contract and indemnification against Perkins Coie is not, as Landau would couch it, directly related to Landau's malicious prosecution lawsuit. The direct relationship is not to Rockefeller's

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[5] The court noted: "the summary procedure by which Sea Foods chose to pursue the funds in Red Chamber's possession does not allow for Red Chamber to pursue a cross-complaint." (*Sea Foods Co., Ltd. v. O.M. Foods Co., Ltd., supra*, 150 Cal.App.4th at p. 778.)

[6] Landau also cites *Professional Travel, Inc. v. Kalish & Rice, Inc.* (1988), 199 Cal.App.3d 762, but that case involved jurisdiction based on minimum contacts, not consent.

2007 indemnification action, but rather to the Washington action filed by Rockefeller against Landau.

Rockefeller did not consent to jurisdiction.

B. Minimum contacts

The court ruled: "Plaintiff has the burden of showing that Defendant Rockefeller established minimum contacts with the State of California sufficient for this Court to exercise specific jurisdiction over him. None of Plaintiff's evidence is sufficient to establish that Defendant Rockefeller has established minimum contacts with California." Landau asserts that the court erred in determining that it did not have specific jurisdiction over Rockefeller. Landau has the burden to establish by a preponderance of the evidence that jurisdiction is proper; if the facts are not in conflict, we are presented with a question of law and we review the jurisdictional issue de novo. (*Simons v. Steverson* (2001) 88 Cal.App.4th 693, 711.) Landau must meet his burden with competent evidence. (*Nobel Farms, Inc. v. Pasero, supra*, 106 Cal.App.4th at p. 657–658; *Ziller Electronics Lab GmbH v. Superior Court* (1988) 206 Cal.App.3d 1222, 1233.)

"[P]ersonal jurisdiction over the nonresident defendant . . . is proper on the theory of specific jurisdiction where the nonresident defendant purposely availed himself of the benefits or privileges of the forum; deliberately engaged in significant forum activities; or created continuing obligations between himself and forum residents." (*Simons v. Steverson, supra*, 88 Cal.App.4th at p. 709.) "'[I]n analyzing the exercise of specific jurisdiction, "[o]nce it has been decided that a defendant purposefully established minimum contacts within the forum State, these contacts may be considered in light of other factors to determine whether the assertion of personal jurisdiction would comport with 'fair play and substantial justice.'"'" (*Ibid.*) "'[A] claim need not arise directly from the defendant's forum contacts in order to be sufficiently related to the contact to warrant the exercise of specific jurisdiction. Rather, as long as the claim bears a substantial connection to the nonresident's forum contacts, the exercise of specific jurisdiction is appropriate. . . . [T]here must be a *substantial connection* between the forum contacts and the plaintiff's claim to warrant the exercise of specific jurisdiction.'"

(*Id.* at p. 710.) Thus, Rockefeller may be subject to specific jurisdiction "if [he] has purposefully availed himself . . . of forum benefits [citation], and the 'controversy is related to or "arises out of" [his] contacts with the forum.'" (*Vons Companies, Inc. v. Seabest Foods, Inc.* (1996) 14 Cal.4th 434, 446.)

1. Request for judicial notice

It is Landau's burden to establish by competent evidence that jurisdiction over Rockefeller is proper; accordingly, we must initially address whether Landau properly relies on documents that were the subject of his September 15, 2008 request for judicial notice in support of his opposition to the motion to quash. Landau requested judicial notice of Rockefeller's complaint in the 2007 action against Perkins Coie; the unpublished opinion of the Washington court of appeal affirming the verdict in Rockefeller's Washington action against Landau ; a memorandum filed by Rockefeller in the 2007 California action against Perkins Coie, with a supporting declaration by Rockefeller; and a notice of ruling in the 2007 action. Landau's opposition relied on the contents of these documents to establish contacts that Rockefeller had with California at the time that he brought the 2003 Washington action against Landau.

The trial court, in the memorandum containing its tentative ruling on the motion to quash, which was given to the parties before the hearing, noted: Landau "requests the Court take judicial notice of 4 documents. . . . The Court takes judicial notice of the existence of these documents but declines to take judicial notice of the truth of their contents." At the hearing on the motion, both counsel stated they had read the court's tentative ruling. Landau's counsel argued that the contents of those documents showed that the court had jurisdiction over Rockefeller. Rockefeller's counsel pointed out that the complaint in Rockefeller's 2007 action was unverified. There was no discussion of the request for judicial notice or the ruling thereon, and the court read its tentative ruling (which was virtually identical to the minute order). The court did not rule on the specific

evidentiary objections made by Rockefeller, although Rockefeller's counsel pressed for a ruling for the purpose of preserving the record for appeal.[7]

Landau quotes liberally from the documents in his opening brief on appeal,[8] without addressing the outcome of his request for judicial notice or challenging the court's ruling. In his reply brief, he argues that the trial court made no formal ruling on the request and "Thus, the trial court must be determined to have implicitly taken judicial notice of Landau's documents." Also in his reply brief, Landau asks this court to take judicial notice of the documents and of the truth of their contents.

The trial court indicated that it would take judicial notice of the existence of the records, but would not take judicial notice of the truth of the contents of the documents; there is therefore a ruling in the record. (See Evid. Code, § 456 ["If the trial court denies a request to take judicial notice of any matter, the court shall at the earliest practicable time so advise the parties and indicate for the record that it has denied the request."].)

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[7] Rockefeller objected to the documents subject to Landau's request for judicial notice on the grounds of relevance, lack of foundation, hearsay, and lack of authentication, and also argued that the court should not take judicial notice of the truth of the matters in the documents subject to the request.

[8] Landau cites to the documents that were the subject of his request for judicial notice in opposition to the motion to quash throughout his discussion of personal jurisdiction in his opening brief. His record citations to his appendix on appeal, however, are not to the documents as they appear in the appendix attached to the request related to the motion to quash, but to the documents as they appear elsewhere in the appendix, specifically as attached to his requests for judicial notice in connection with his opposition to the anti-SLAPP motion. The court did not rule on Landau's requests for judicial notice in connection with the anti-SLAPP motion. Landau attributes his erroneous citations to inadvertence and the necessity of filing a single opening brief. We take him at his word.

At any rate, because our affirmance of the grant of the anti-SLAPP motion does not depend on our review of those documents, we need not consider the status of the request for judicial notice as related to the anti-SLAPP motion. (See *Gallant v. City of Carson* (2005) 128 Cal.App.4th 705, 711 [evidentiary objections not made in context of anti-SLAPP motion are deemed waived].) We consider the documents only as they were the subject of Landau's request for judicial notice related to the opposition to the motion to quash, in which the court took judicial notice only of the documents' existence.

The court gave the parties its memorandum containing the ruling before the hearing, and Landau was well aware that he could not rely on those documents for the truth of their contents. Further, in its minute order the court stated "[n]one of Plaintiff's evidence is sufficient to establish that Defendant Rockefeller has established minimum contacts with California," and cited *Ziller Electronics Lab GmbH v. Superior Court*, *supra*, 206 Cal.App.3d at pp. 1232–1233 (plaintiff has the burden to demonstrate jurisdiction by competent evidence in affidavits and authenticated documents; "[a]n unverified complaint may not be considered as an affidavit supplying necessary facts"). Landau did not challenge this ruling in the trial court. Nor did he challenge it in his opening brief on appeal, addressing it only in his reply brief after both Rockefeller and Sidle/GHP pointed out the erroneous citations and the court's ruling declining to take judicial notice of the truth of the contents of the documents.

Landau has waived his challenge to the court's ruling. In any event, we decline to take judicial notice of the truth of the documents. (Cf. *Kilroy v. State of California* (2004) 119 Cal.App.4th 140, 145, 148 [courts may take judicial notice of the existence of documents in court file, but may not take judicial notice of truth of hearsay statements in decisions and files, allegations in affidavits, or declarations; factual findings in prior judicial opinion are also not proper subject of judicial notice]; *Sosinsky v. Grant* (1992) 6 Cal.App.4th 1548, 1569–1570.)

2. Rockefeller's contacts with California

Because we do not take judicial notice of Landau's documents for the truth of the statements therein, Landau has little probative evidence of Rockefeller's contacts with California. In his reply brief, Landau continues to argue that Rockefeller was a resident of California in 2002 and 2003,[9] and that Rockefeller strategized with Perkins Coie lawyers in California to file the Washington action in 2003 in an attempt to force Landau

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[9] Landau concedes that "Rockefeller's current state of residence is of no import." In his reply brief, he continues to argue that Rockefeller was "admittedly a resident of California during 2002 and until the end of 2003," but he cites only to Rockefeller's statement in his brief that his "contacts with California since the end of 2003 have been almost nil."

to settle the malpractice action in California, but those arguments are based on the contents of the court documents (including the unverified complaint in Rockefeller's 2007 action against Perkins Coie), declarations, and opinions whose truth is not properly subject to judicial notice.

Other than his references to factual assertions in the documents which are not properly subject to judicial notice for their truth, on appeal Landau cites to a California State Bar online record showing Rockefeller was an active member of the California bar in 2008. The maintenance of a California law license alone is insufficient to confer specific jurisdiction over Rockefeller. (See *Crea v. Busby* (1996) 48 Cal.App.4th 509, 516.)

Landau has not met his burden to show with competent evidence Rockefeller's minimum contacts with California. We therefore do not proceed to the second jurisdictional inquiry, in which the "'contacts may be considered in light of other factors to determine whether the assertion of personal jurisdiction would comport with "fair play and substantial justice."'" (*Simons v. Steverson*, *supra*, 88 Cal.App.4th at p. 709.) We note that California's "'"manifest interest" in providing its residents with a convenient forum for redressing injuries inflicted by out-of-state actors'" (*Vons Companies, Inc. v. Seabest Foods*, *supra*, 14 Cal.4th at p. 447) is absent here. Landau is a Washington resident.

DISPOSITION

The trial court's orders granting GHP's and Sidle's anti-SLAPP motion and granting Rockefeller's motion to quash service by publication are affirmed. Respondents are awarded their costs on appeal.

NOT TO BE PUBLISHED.

JOHNSON, J.

We concur:

ROTHSCHILD, Acting P. J.

CHANEY, J.